

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JAMES D. ADAMS,  
Petitioner,

v.

JOHN HIROKAWA, Chief of Corrections,  
Respondent.<sup>1</sup>

Case No. [14-cv-04483-KAW](#)

**ORDER FOR RESPONSE TO  
EXHAUSTION ISSUE**

Petitioner James D. Adams, a state prisoner incarcerated in the Santa Clara County Jail (“SCCJ”), filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On November 7, 2014, the Court issued an order for Petitioner to show cause why his petition should not be dismissed for lack of exhaustion because it appeared, from the face of the petition, that none of his claims had been presented to the California Supreme Court. *See Rose v. Lundy*, 455 U.S. 509, 522 (1982) (holding every claim raised in federal habeas petition must be exhausted). The general rule is that a federal district court must dismiss a federal habeas petition containing any claim as to which state remedies have not been exhausted. *Id.* District courts have discretion to hold a mixed petition, that is, a petition that contains exhausted and unexhausted claims, in abeyance pending exhaustion of the unexhausted claims. *Rasberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006) (citing *Rhines v. Weber*, 544 U.S. 269 (2005)). But, a fully unexhausted federal habeas petition may not be stayed and must be dismissed. *Id.*

On November 17, 2014, Petitioner filed his response. He argues that he is excused from

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<sup>1</sup> In accordance with Habeas Rule 2(a) and Rule 25(d)(1) of the Federal Rules of Civil Procedure, the Clerk of the Court is directed to substitute Chief of Corrections John Hirokawa as Respondent because she is Petitioner's current custodian.

1 exhausting his claims under 28 U.S.C. § 2254(b)(1)(B), which provides that a petition may  
2 proceed without exhaustion if it appears that “there is an absence of available State corrective  
3 process or circumstances exist that render such process ineffective to protect the rights of the  
4 applicant.” 28 U.S.C. § 2254(b)(1)(B)(i) and (ii). Petitioner argues that the state appeals and  
5 habeas processes are unavailable to him because of his claim that the trial judge committed  
6 judicial misconduct by coercing Petitioner to accept a plea and imposing an illegal sentence.  
7 Petitioner claims that the judge acted in retaliation against him because he named the judge as a  
8 defendant in a civil rights action. Petitioner states that this creates a conflict of interest between  
9 himself and the entire Santa Clara County judiciary, which alleviates the requirement that he  
10 pursue relief in the state courts.

11 At this stage in the proceedings and without a record from the state court, this Court cannot  
12 rule on Petitioner’s argument that he is excused from exhausting his claims. The Court will serve  
13 the petition on Respondent so that he can respond to this argument with citations to the relevant  
14 sections of the state court record.

15 Petitioner also requests to proceed in his civil rights case, *Adams v. Santa Clara County*  
16 *Superior Court, et al.*, No. C 12-06276 YGR (PR), which was dismissed on October 30, 2013. If  
17 Petitioner wishes to proceed with his civil rights case, he must file a motion in that case, not in this  
18 habeas proceeding.

19 Petitioner also requests appointment of counsel. The Sixth Amendment right to counsel  
20 does not apply in habeas corpus actions. *Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir.  
21 1986) (unless an evidentiary hearing is required, the decision to appoint counsel in habeas corpus  
22 proceedings is within the discretion of the district court). Title 18 U.S.C. § 3006A(a)(2)(B),  
23 however, authorizes a district court to appoint counsel to represent a habeas petitioner whenever  
24 “the court determines that the interests of justice so require” and such person is financially unable  
25 to obtain representation. The courts have made appointment of counsel the exception rather than  
26 the rule by limiting it to: (1) capital cases; (2) cases that turn on substantial and complex  
27 procedural, legal or mixed legal and factual questions; (3) cases involving uneducated or mentally  
28 or physically impaired petitioners; (4) cases likely to require the assistance of experts either in

1 framing or in trying the claims; (5) cases in which the petitioner is in no position to investigate  
 2 crucial facts; and (6) factually complex cases. See generally 1 J. Liebman & R. Hertz, *Federal*  
 3 *Habeas Corpus Practice and Procedure* § 12.3b at 383-86 (2d ed. 1994). Appointment is  
 4 mandatory only when the circumstances of a particular case indicate that appointed counsel is  
 5 necessary to prevent due process violations. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.  
 6 1986); *Eskridge v. Rhay*, 345 F.2d 778, 782 (9th Cir. 1965).

7 Because the exhaustion issue must first be resolved, it is unclear if the merits of the  
 8 petition will be addressed. Therefore, appointment of counsel at this point is unwarranted. In the  
 9 event the exhaustion issue is decided in Petitioner's favor and an evidentiary hearing is required to  
 10 resolve the merits of the claims, the Court will appoint counsel on its own motion. *See Knaubert*,  
 11 791 F.2d at 728 (appointment of counsel mandatory if evidentiary hearing is required).

## 12 CONCLUSION

13 Based on the foregoing, the Court orders as follows:

14 1. Petitioner's requests for appointment of counsel and to proceed with his civil rights case  
 15 are denied.

16 2. The Court declines to rule on Petitioner's argument that he is excused from exhausting  
 17 his petition at this time.

18 3. The Clerk of the Court shall serve a copy of this Order and the petition and all  
 19 attachments thereto upon Respondent and Respondent's attorney, the County Counsel of Santa  
 20 Clara County. The Clerk also shall serve a copy of this Order on Petitioner at his current address.

21 4. No later than sixty days from the date of this Order, Respondent shall file with this  
 22 Court and serve upon Petitioner a motion to dismiss on procedural grounds addressing exhaustion  
 23 of state remedies, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing  
 24 Section 2254 Cases. Petitioner shall file with the Court and serve on Respondent an opposition or  
 25 statement of non-opposition to the motion within thirty days of receipt of the motion, and  
 26 Respondent shall file with the Court and serve on Petitioner a reply within fourteen days of receipt  
 27 of an opposition. If the Court concludes that Petitioner may proceed on the merits of his claims, it  
 28 will issue a briefing schedule at that time.

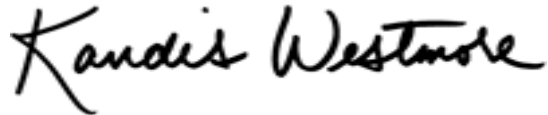
1           5. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court  
2 informed of any change of address by filing a separate paper with the Clerk headed "Notice of  
3 Change of Address," and must comply with the Court's orders in a timely fashion. He also must  
4 serve on Respondent's counsel all communications with the Court by mailing a true copy of the  
5 document to Respondent's counsel.

6           6. Extensions of time are not favored, though reasonable extensions will be granted. Any  
7 motion for an extension of time must be filed no later than ten days prior to the deadline sought to  
8 be extended.

9           7. Respondent shall file his Consent or Declination to Magistrate Judge Jurisdiction within  
10 thirty days from the date of this order. The Clerk of the Court shall send Respondent a form to  
11 indicate his consent or declination.

12           **IT IS SO ORDERED.**

13           Dated: February 4, 2015



KANDIS A. WESTMORE  
United States Magistrate Judge